

*United States Court of Appeals
for the Second Circuit*



APPELLEE'S BRIEF

ORIGINAL
74-2069

*To be argued by
Morton D. Gottlieb.*

**United States Court of Appeals
For the Second Circuit.**

LAWRENCE WALSH and LORETTA WALSH,
Plaintiffs-Appellants,
against

THE CITY OF LONG BEACH, ARTHUR ZIMMER-
MAN, DAVID LINDEN, AL SMITH and GEORGE
TRIPANI.
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK (BRUCHHAUSEN, J.).

BRIEF FOR DEFENDANTS-APPELLEES.

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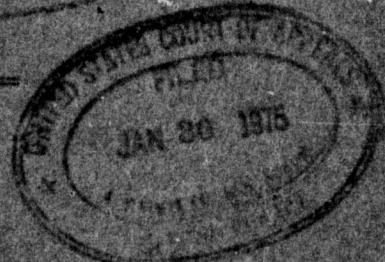




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-against-

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On Appeal From the United States District Court
For the Eastern District of New York
(Bruchhausen, J.)

BRIEF FOR DEFENDANTS-APPELLEES

PRELIMINARY STATEMENT

The Plaintiffs-Appellants contend that Judge Bruchhausen erroneously dismissed all seven of the causes of action pleaded in their complaint, notwithstanding the fact that "neither the findings of law nor findings of fact addressed themselves to six of the causes of action." The fact is that Judge Bruchhausen's decision encompassed all seven causes of action when he stated:

"This action is brought pursuant
to the Civil Rights Act, 42 U.S.C.
1982 and 1983, and Article I,
Section 10, the Fourth, Fifth and
Fourteenth Amendments of the Federal
Constitution."

THE DECISION BELOW

Rule 56 of the Federal Rules of Civil Procedure provides that either party may move for a summary judgment at any time with or without supporting affidavits. In this case, the memoranda or law of both parties were submitted by consent of the attorneys for both parties and accepted by Judge Bruchhausen for that purpose, without other papers. Formal written notice and cross-notice of the oral motions were waived by the respective attorneys and by the Judge who decided the motions. No objection to that procedure was ever raised until the plaintiffs' attorneys prepared their brief on appeal. The dismissal of the complaint encompassed all seven causes of action, as set forth in the Preliminary Statement, supra.

Memoranda of Law were submitted to Judge Bruchhausen by both parties, in which the facts were set forth at length, and numerous Points were briefed, and citations and quotations were included in support of each Point. Judge Bruchhausen's decision was restricted to the grounds upon which he based the dismissal of the complaint. Had he not reached his conclusion on those grounds, he would

certainly have gone on to consider the Point
that the Complaint should be dismissed for
failure of the Plaintiffs to serve a Notice
of Claim, as required by Sec. 50-e of the General
Municipal Law of the State of New York and
Section 257 of the City Charter of the City of
Long Beach, and the Plaintiffs' failure to plead
the service of such Notice in the complaint.

THE FACTS

On August 18, 1922, the City Council of the City of Long Beach enacted a comprehensive Zoning Ordinance for the entire City of Long Beach. The Premises 425 West Olive Street is situated on the northerly side of Olive Street within the area between the easterly side of Lindell Boulevard and 100 feet west of Laurelton Boulevard, in the City of Long Beach, N.Y. That Ordinance provided (Exhibit "A") that within the said area on Olive Street, "there may be erected a detached bungalow or house for one family only on each plot of land forty feet in width by one hundred feet in depth"

29, 1927
On April 21, 1927, an application (Exhibit "B") was filed with the Building Commissioner of Long Beach for a permit to erect a one-family residence on the aforesaid vacant land, in accordance with plans and specifications submitted therewith. The application was approved by the Building Commissioner, and on September 1, 1927, a Certificate of Occupancy for a one-family residence was issued by the Building Commissioner (Exhibit "C").

On October 9, 1950, an application was made by one Rudolph Steins, a contractor, on behalf of George Wilson, the then-owner of said premises, for a building permit to

remove the vestibule and build an open porch, at the cost of \$500.00. That application stated that the premises were then occupied as a one-family residence, and would continue to be occupied as a one-family house. (Exhibit "D").

On April 7, 1952, one David Robinson, an attorney, informed the Long Beach Building Department by letter that a client of his wished to purchase said premises, and asked to be advised if there were any violations filed against same. (Exhibit "E"). On April 9, 1952, the Long Beach Building Commissioner, Peter J. DeVine, replied that on inspection of the premises revealed that it contained three apartments, although it was located in a one-family area and had a Certificate of Occupancy for a one-family residence. (Exhibit "F").

In that same month, to wit, on April 25, 1952, the plaintiff succeeded in obtaining in one day from that same Building Commissioner by devious means, a three-family Certificate of Occupancy (Exhibit "G"), unquestionably illegal and improper on its face. On that day, one Robert J. Kleiner, an attorney who subsequently inherited the political leadership of Long Beach, prepared a letter to said Peter J. DeVine (Exhibit "H"), requesting a "corrected"

Certificate of Occupancy, apparently on the ground that said premises had been surreptitiously constructed and used in violation of the filed plans and Certificate of Occupancy. On the same day, the Corporation Counsel of Long Beach rendered an "opinion" (Exhibit "I") approving the issuance of a three-family Certificate of Occupancy to legalize an illegal use upon the ground of "what is expedient for the public" rather than what is the legal permitted use of the premises. Also on the same day, the Building Commissioner issued the Certificate of Occupancy for a three-family use (Exhibit "G"), stating therein that it was in a Residence B zone, which is restricted to one-family residences (Exhibit "J"). No building commissioner has any authority to issue a three-family certificate of occupancy for a building in a one-family district unless the building had a legal non-conforming use prior to 1922, and no one has made or can make that claim in this case. The foregoing circumstances indicate that the three-family Certificate of Occupancy (Exhibit "G") resulted from a very apparent conspiracy to circumvent the clear and unambiguous provisions of the Zoning Law, and

was on its face illegal and null and void for all purposes from the moment it was issued.

On June 11, 1968, David Linden, the then Building Commissioner of Long Beach, informed Joseph Kotkin, the plaintiff's predecessor in title, that said premises was zoned for one family (Exhibit "K"). On April 15, 1969, said Joseph Kotkin conveyed said premises to the plaintiffs for the sum of approximately \$36,000.00, as indicated by the documentary stamps on the deed, of which \$31,000.000 was furnished by the mortgagee, Richmond Hill Savings Bank, and the balance of \$5,000.000 was invested by the plaintiffs and represented their initial equity in the premises.

The plaintiffs were represented by one Harvey L. Grapek, a knowledgeable and experienced real estate attorney, who resided and maintained his office in Long Beach and still does. It must be assumed that Mr. Grapek knew or should have known that 425 West Olive Street was in a one-family zone. In any event, it was his obligation to inquire whether there were any violations of any kind recorded against the premises, as Mr. Robinson did previously (Exhibit "E"). Had such a normal and routine inquiry been made, Building Commissioner Linden would necessarily

have informed him that the property was located in a Residence B zone, which was restricted to one-family residences, as he previously informed Mr. Kotkin (Exhibit "K"), and that the purported three-family Certificate of Occupancy (Exhibit "G") was illegally issued, and was of no force or effect. However, the plaintiffs and their attorney chose not to make such an inquiry, probably to avoid alerting the Building Commissioner and possibly "spoiling" the sale. They voluntarily assumed that risk in the hope of continuing to "get away" with the illegal use.

However, neighbors soon complained of excessive numbers of people in the house and excessive numbers of parked cars blocking driveways on the block. Inspections disclosed that the house was being used as a three-family house, and on November 7, 1969 the then Building Commissioner notified the plaintiffs by certified mail (Exhibit "L") that they were violating the zoning law and directed them to correct the violation. When subsequent inspections disclosed that the plaintiffs failed to correct the violation after the lapse of a very adequate period of time, the Building Commissioner formally notified the plaintiffs on December 24, 1970 that the three-family certificate of occupancy was illegally issued, and that "I hereby revoke and recall the said Certificate of Occupancy #A811 issued on April 25, 1952" (Exhibit "M"). Despite that notice, the plaintiffs continued

to use the property and attempted to sell it as a legal three-family house.

On March 8, 1972, the plaintiffs entered into a written agreement with one Alan Mandel to sell said property to the latter for \$39,000.00 as a legal three-family dwelling. Station Realty was the broker who brought about that contract. On June 14, 1972, said broker applied to the building commissioner for a Certificate of Compliance (Exhibit "N"), which was refused because the premises were occupied as a three-family house in violation of the Zoning Law (Exhibit "O").

At some time before June 8, 1972, the plaintiffs moved from said premises to Lyndhurst, New Jersey, and rented the apartment they vacated to a tenant, thus maintaining three-family occupancy. (Exhibit "P").

On or about June 22, 1972, the plaintiffs filed an application with the Long Beach Zoning Board of Appeals to permit the use of said premises as a three-family house, but they failed to perfect that application by filing due proof of required service of notice on owners of abutting property owners despite a written request that they do so. (Exhibit "Q"), and abandoned all efforts to legalize the three-family use by administrative procedures.

At no time did the plaintiffs ever attempt to reduce said premises to a one-family use, which required

only the removal of the kitchen equipment of two of the kitchens, and to minimize their damages by selling the house as a one-family residence. Instead, they defaulted in paying their mortgage installments which became due March 1, 1972 when all three apartments were occupied, and thereafter, and the mortgagee instituted foreclosure proceedings about June 15, 1972, and subsequently bid in the property on the foreclosure sale and became the owner thereof.

On January 9, 1973, the summons and complaint in this action was served on the defendants, without any Notice of Claim ever having been served on the defendants prior thereto.

CONCLUSION

The premises involved herein was built as a one-family house and has always been a legal one-family house in a one-family district. When it was surreptitiously converted to an illegal residence for three families by adding two additional kitchens, its legal status remained unchanged. When the plaintiffs' predecessor in title found a way to obtain an illegal three-family certificate of occupancy from an obliging building commissioner, the premises still remained an illegal three-family house in a one-family district. When the plaintiffs purchased the premises, they and their attorney either knew or should have ascertained by the usual and normal inquiry that they were purchasing a legal one-family house masquerading as a three-family house. When a later building commissioner revoked and recalled the illegal three-family certificate of occupancy, he did nothing more nor less than his sworn duty to uphold and enforce the Zoning Law. The plaintiffs had two apparent options: (1) to attempt to legalize the three-family use by an application to the zoning board, or (2) to restore the house to a legal one-family residence by removing the two kitchens that were added without legal sanction, and sell it at the best price available. They chose neither of these options, but elected to try to sell the property as a three-family house,

and to conceal from the purchaser its truthful legal status. That effort failed, and the plaintiffs abandoned the property.

If the plaintiffs sustained any loss at all in their ill-advised venture, it would not exceed their original investment of \$5,000.00 plus their possible profit of \$3,000.00 on the prospective sale, less the broker's commission (about \$2,000.00) and less all the profits on the rents they received from the two illicit apartments for three years and the value of their own apartment during the same period. An accurate accounting would probably show a net profit on the entire transaction. It is no wonder that they chose to abandon the property and institute this action for \$60,150,000.00 instead of selling the property legitimately as a one-family house. They had nothing to lose, and the allegation that their damages exceeded \$10,000.00 is a myth.

POINT I

THE COMPLAINT IN THIS ACTION SHOULD
BE DISMISSED BECAUSE IT DOES NOT
ALLEG THE SERVICE OF A NOTICE OF
CLAIM, AS REQUIRED BY THE GENERAL
MUNICIPAL LAW OF THE STATE OF NEW
YORK AND THE CHARTER OF THE CITY OF
LONG BEACH

The plaintiffs' complaint consists of seven alleged causes of action, and demands judgment against the defendants for a total sum of \$60,150,000.00. The defendants' answer consists of certain admissions and many denials of material allegations of said complaint, and four affirmative defenses, the first of which alleges that the matters in controversy are less than \$10,000.00, and the last of which alleges that the plaintiffs failed and neglected to file a Notice of Claim prior to the commencement of this action, as required by law.

Sec. 257 of the City Charter of the City of Long Beach (laws 1922 Chapter 635 as amended) provides as follows:

"(1) In any case founded upon tort a notice of claim is hereby required as a condition precedent to the commencement of an action or special proceeding against the City of Long Beach, or any officer, appointee, or employee thereof."

Sec. 50-(e) of the General Municipal Law of the State of New York provides as follows:

"1. In any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general corporation law, or any officer, appointee or employee thereof, the notice shall comply with the provisions of this section and it shall be given within ninety days after the claim arises."

Due service of a notice of claim is a condition precedent to the institution of a cause of action against a municipality or municipal corporation, or any officer, appointee or employee thereof, and must be pledged and proved by the plaintiff.

Barchet v. New York City Transit Authority,
1967, 20 N.Y. 2d 1, 281 N.Y.S. 2d 289,
228 N.E. 2d 361.

Berg v. City of Long Beach,
1959, 19 Misc. 2d 317, 186 N.Y.S. 2d 401.

Ruggio v. City of Oswego,
1955, 4 Misc. 2d 29, 148 N.Y.S. 2d 82.

Pascucci v. Nassau County,
1957, 8 Misc. 2d 229, 165 N.Y.S. 2d 797.

Balin v. Larkin,
1970, 62 Misc. 2d 949, 310 N.Y.S. 2d 402,
modified on other grounds, 36 A.D. 2d 530,
318 N.Y.S. 2d 568, appeal dismissed
28 N.Y. 2d 800, 321 N.Y.S. 2d 906, 270
N. E. 2d 725.

Webster's Dictionary defines a tort, in law, as "a wrongful act (not involving a breach of contract) resulting in an injury, loss, or damage, for which the injured party can bring civil action."

Ballantine's Law Dictionary defines a tort as "A wrong independent of contract" and as "An injury or wrong committed,

either with or without force, to the person or property of another.

Each and every act alleged by the complaint to have been committed by the defendants fits exactly the foregoing definitions of the word "tort". Hence when Sec. 50-e of the General Municipal Law and Sec. 257 of the City Charter state that "In any case founded upon tort" a notice of claim is required, the instant case is exactly the type of case the legislature had in mind. It must be presumed that they are using the word "tort" in its usual and legal meaning.

The leading and basic pronouncement of the highest court of New York State on this subject is the case of *Thomann v. City of Rochester*, 256 N.Y. 165, 176 N.E. 129, in which Chief Justice Cardozo stated:

"The requirement is strict, but not so strict as to be arbitrary. A judgment against a municipal corporation must be paid out of the public purse. Raids by the unscrupulous will multiply apace if claims may be postponed till the injury is stale. The law does not condemn as arbitrary a classification of rights and remedies that is thus rooted in the public needs (*Frasch v. City of New Ulm*, 130 Minn. 41, 43; *O'Neil v. City of Richmond*, 141 Va. 168; *Sheehy v. City of New York*, 160 N.Y. 139, 143). The time allowed is short, yet adequate in general to enable diligence to move (*Frasch v. City of New Ulm*, *supra*, p. 44).

Nothing in this record suggests disability or ignorance. There being opportunity for knowledge and competence to act, the statute gives the rule to which obedience is due..."

"Not lack of opportunity, therefore, but indifference or forgetfulness is responsible for the plaintiff's plight. He had the privilege if he had acted promptly upon the discovery of the nuisance to make demand for all the damages that had developed in the past and all that might develop afterwards until the conclusion of the trial. He ignored the obvious remedy that was then ready at his hand. He waited for four years till the city was about to discontinue the offensive and unlawful use, and then came forward with a claim for the accumulated loss. This is the very evil that the statute was designed to cure.

We are not forgetful of the fact that the bad conditions at the dump were known to the defendant's mayor and to other public officers. The plaintiff was not relieved thereby of the duty to adhere to the statutory forms. What satisfied the statute is not knowledge of the wrong. What the statute exacts is notice of the "claim". (emphasis supplied). The Legislature has said that a particular form of notice, conveyed with particular details to particular public officers, shall be a prerequisite to the right to sue. The courts are without power to substitute something else."

The plaintiffs allege two specific acts as the cause of their alleged damages, to wit, the revocation of the three family certificate of occupancy on December 24, 1970, and the refusal to issue a certificate of compliance on June 22, 1972. These are the dates of the alleged torts from which the time to file a Notice of Claim started to run.

The plaintiffs, in a vain effort to circumvent this requirement, state that it does not apply to suits in equity nor to those involving injuries of a continuing nature. In support of that contention, they cite cases which involved

continuing wrongs and which demanded essentially equitable relief, such as an injunction to restrain a continuing trespass, with incidental damages. In the present action, the acts complained of are specific incidents which occurred at a specific time and place, and for which the plaintiffs are demanding over \$60,000,000., hardly incidental by any standard. The equitable relief demanded by the complaint is not even incidental to the claim for damages, because any equitable relief became academic when the plaintiffs abandoned the premises before the commencement of this action.

The brief of the Plaintiffs-Appellants (pages 18 and 19) cites the case of *Sexstone v. City of Rochester* (32 A.D.2d 73, 301 N.Y.S. 2d 887). That action was brought against the City for negligently issuing a certificate of occupancy for a building inhabited in violation of the residency laws. The question involved was not whether the filing of a Notice of Claim was required, but only whether it was timely. It was agreed by the parties and the court that the filing of the Notice was a necessary prerequisite to the institution of the action. The Court held:

"The filing of the notice of claim was timely under General Municipal Law Sections 50-e and 50-i,

as it was within ninety days after the violations were discovered. The running of the ninety day period should be measured not from the time of the negligent act but from the date the negligent act produced injury to the plaintiffs."

In the case at bar, the plaintiffs allege that they sustained injury (1) when the three-family certificate of occupancy was revoked and (2) when they were refused a certificate of compliance. They failed to file a Notice of Claim within 90 days thereafter, nor have they filed such Notice at any time before or since this action was instituted. Their failure to file a Notice of Claim and to plead such filing in their complaint renders the complaint fatally defective, and requires that it be dismissed, entirely apart from all other considerations.

POINT II

THE BUILDING COMMISSIONER
AND HIS INSPECTORS WERE
FULLY JUSTIFIED IN RE-
VOKING THE ILLEGAL THREE-
FAMILY CERTIFICATE OF
OCCUPANCY AND REFUSING
TO ISSUE AN IMPROPER CER-
TIFICATE OF COMPLIANCE.

The Zoning Ordinance of the City of Long Beach, con-
stituting Article I of Chapter 9 of the Municipal Code of
the City of Long Beach, provides in Section 9-112(c) :

"It shall be the duty of the Commissioner of Buildings
to enforce the provisions of this article but this
provision shall not limit the power of all law
enforcement officers to enforce the provisions thereof."

Section 9-112(f) of said Municipal Code states:

"The Building Commissioner shall revoke any permit
heretofore or hereafter issued where the building,
structure or premises covered by such permit are
used or permitted to be used, or designed or intended
to be used in violation of the provisions of this
article, except where such non-conforming use is
permitted by direction of the Board of Appeals as
herein provided. Such revocation shall become effective
when a written notification to such effect, signed by
the Building Commissioner is mailed to the owner or
occupant of the premises in question." (emphasis supplied).

The individual defendants are alleged in the complaint herein
to be city officials, to wit: Building Commissioners and
Building Inspectors. As such, their acts were performed wholly
within the scope of their official duties and responsibilities.

Pritt v. Johnson,

D.C. Pa. 1967, 264 F. Supp. 167

Hoffman v. Holden,

C.A. Or. 159, 268 F. 2d 280

Hardy v. Kirchner,

D.C. Pa. 1964, 232 F. Supp. 751

Selico v. Jackson,

D.C. Cal. 1962, 201 F. Supp. 475

Dunn v. Estes,

D.C. Mass. 1953, 117 F. Supp. 146

Ahlstrand v. Lethert,

D.C. Minn. 1970, 319 F. Supp. 283 -

Wilson v. Webster,

D.C. Col. 1970, 315 F. Supp 1104

42 U.S.C. Section 1983 was not intended to be in derogation of common law immunities, nor was it enacted to discipline local law enforcement officials.

Bauers v. Heisel,

C.A.N.J. 1966, 361 F.2d 581, certiorari denied
87 S.Ct. 1367, 386 U.S. 1021, 18 L.Ed 2d 457.

Smith v. Dougherty,

C.A. Ill. 1961, 286 F. 2d 777, certiorari denied
82 S.Ct. 180, 368 U.S. 903, 7L Ed 2d 97

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88 S. Ct. 175, 389 U.S. 877, 19 L. Ed 2d 165

Basista v. Weir,

D.C. Pa. 1964, 225 F. Supp. 619, aff'd in part,
reversed in part on other grounds 340 F.2d 74

Where local officials act wholly within their official responsibilities and do not intentionally cooperate in any fraudulent scheme, the resulting tort is not one embraced within Sec. 1983, and the tort is solely that of the private individuals, the redress of which rests with state courts.

Dinwiddie v. Brown,

C.A. Tex. 1956, 230 F. 2d 465, certiorari denied
76 S.Ct. 1041, 351 U.S. 971, 100 L.Ed. 1490,
rehearing denied 77 S. Ct. 29, 352 U.S. 861,
1 L. Ed. 2d 72.

In the case of Wise v. City of Chicago, et al. C.A. Ill. 1962, 308 F.2d 364, one Arthur Wise was fined in the Municipal Court of Chicago for violating the building code and appealed to the Illinois Appellate court without paying the fine. Instead of issuing an execution against property, the Corporation Counsel's office secured an order of commitment. Despite the fact that Wise was ill, he was arrested and removed to the prison hospital, where he died three months later. His administratrix brought an action in the Federal District Court under the civil rights statute Title 42, U.S.C. Sec. 1983, against the City of Chicago, the Corporation Counsel and an assistant Corporation Counsel. The amended complaint was dismissed for insufficiency, and on appeal to the Court of Appeals it was held that plaintiff was not entitled under that statute to recover against a municipal corporation and the officials of that corporation for alleged deprivation of the decedent's civil rights.

Circuit Judge Knoch held for the unanimous court:

"Plaintiff invoked the jurisdiction of the District Court under Title 42, U.S.C.A. Sec. 1983. In Monroe v. Pope, supra (365 U.S. 187, 81 S. Ct. 484, 5 L.Ed 2d 505) the United States Supreme Court held that Congress did not undertake to bring Municipal corporations within the ambit of that statute. In Stift v. Lynch, supra (page 239 of 267 F. 2d) Chief Judge Duffy, speaking for this court, said:

'In Easton (eaton) v. Bibb, 7 Cir. 217 F. 2d 446, 449, we cited with approval Loughlin v. Rosenman 82

U.S. App.D.C. 164, 163 F. 2d 838, as authority for the proposition that prosecuting officials are not to be amerced by actions under the Federal Civil Rights Act for their actions in connection with official prosecutions even though it is alleged that such acts were done maliciously.'

... the ruling of the District Court must be affirmed."

The instant case similarly involves a violation of a zoning law, within the jurisdiction of the Building Department of a municipality. Here, there was no prosecution for the violation, and the municipal officials involved were the Building Commissioner and his subordinate building inspectors. Like the Corporation Counsel and his assistants in the Wise case, they were charged with the enforcement of the building and zoning ordinances of the municipality, and had alternative remedies at their disposal. However, instead of selecting the more severe option of court prsecution, they elected to discharge their obligation to enforce the law by inspecting the premises involved and writing letters concerning the violations they found. In other respects, the two cases are so similar that the rule enunciated in the Wise case should be applied to the instant case, and the complaint should be dismissed for insufficiency on the same ground.

Ransom v. Philadelphia

(1970, D.C.Pa.) 311 F. supp 973

Bennett v. Gravelle

(1971, D.C. Md.) 323 F Supp. 203, aff'd (CA 4)
451 F 2d 1011, cert. denied 407 U.S. 917, 32 L ed 2d 692, 92 S. Ct. 2451

Papagranskis v. Samos

(1950 CA 4 Va.) 186 F 2d 257, cert. denied,

341 U.S. 921, 95 L Ed. 1354, 71 S.Ct. 741
Francis v. Lyman
(1954, CAI Mass.) 216 F 2d 583

In Point IV of their brief, the plaintiffs concede that a municipal corporation is not a "person" within the meaning of Title 42, U.S.C. Sec. 1983, but attempt to justify the maintenance of their action against the individual defendants to accomplish indirectly what they cannot accomplish directly. They cite several cases on page 25, none of which apply to the instant case because they were class actions involving racial or minority discrimination, which is completely absent from the present action. They then cite a number of cases on pages 26 to 28, the most recent of which is this Court's decision in the case of Simmons v. Wetherell, 472 F.2d 509 (2 Civ. 1973), in which it was held:

"(1) As Judge Blumenfeld recognized, the basic question presented by this suit is whether the attempts at condemnation amount to an unconstitutional taking, or whether they simply constitute at most tortious interference by the state officials with Simmons' property rights. Judge Blumenfeld found that the latter situation was presented by the attempts at condemnation here; we agree.

(2, 3) This is not to say that Simmons may not have a valid tort claim, based upon the effects of the state's apparent ineptitude here. But the appropriate forum for the assertion of such a claim is the state court, where Simmons now has an action, brought pursuant to the waiver of immunity in the 1969 Special Act, pending. Whatever else the state's actions here amounted to, they did not constitute a taking within the ambit of Sec. 1983. See Jimmie's Inc. v. City of West Haven, 436 F.2d 1339 (2d Cir.) cert. denied, 403 U.S. 931, 91 S.Ct. 2254, 29 L.Ed.

2d 710 (1971) (emphasis supplied).

The purported certificate of occupancy for a three-family house was invalid on its face from the moment of its issuance, and had no legal effect at any time. The Building Commissioner had the duty to disregard it as a nullity and/or to revoke and recall it, as he did, without the necessity of a formal hearing. Even before he revoked it, that certificate was just as ineffective as it was after it was "revoked and recalled." Any hearing would have been an empty gesture, and the law does not require a vain act. The revocation did not deprive the plaintiffs of any rights or privileges that they possessed before the revocation.

POINT III

A CITY IS NOT PRECLUDED OR ESTOPPED FROM
ENFORCING THE PROVISIONS OF AN ORDINANCE
BY REASON OF ANY ACT OR CONDUCT ON THE PART
OF CITY ADMINISTRATIVE OFFICERS IN PRIOR
ADMINISTRATIONS.

Estoppel is not applicable to a municipality acting
in a governmental capacity.

People v. System Properties Inc.

281 AD 433, 120 N.Y.S. 2d 269, settle 128 N.Y.S.
2d 583, Mod. on other grounds 2 N.Y.S. 330,
160 N.Y.S. 2d 589;

Hiltzik v. Weaver,

16 Misc. 2d 629, 183 N.Y.S. 2d 396, affd 7 AD
2d 1023, 185 N.Y.S. 237; app. gr. 8 AD 2d 723,
187 N.Y.S. 2d 987;

People v. Minuse,

190 Misc. 57, 70 N.Y.S. 2d 426, revd on other
grounds, 273 AD 457, 78 N.Y.S. 2d 309

A municipality in the exercise of its sovereign power
is not to be obstructed by prior unauthorized acts or omissions
of its agents or officers. People v. Baldwin, 197 AD 285, 188
N.Y.S. 542, affd 233 N.Y. 672.

Clearly, an estoppel may not be invoked against public
officers performing their legal duty. If an act is illegal
it cannot be justified because some prior administration has
also disregarded the law. Schieffelin v. Hylan, 106 Misc. 34,
174 N.Y.S. 506, affd 188 AD 192, 176 N.Y.S. 809, affd 227 N.Y. 593.

While it is true that a municipality may be estopped where it is acting in a corporate or proprietary capacity, it cannot be estopped to assert its governmental powers as to acts within its governmental capacity. The enforcement of the zoning ordinance is a governmental function.

Gilliland v. Lincoln Alliance Bank & Trust Co.
145 Misc. 827, 261 N.Y.S. 826, mod. in
other respects 239 AD 68, 264 N.Y.S. 779,
affd. 264 N.Y. 517.

A municipality is not estopped from enforcing its zoning laws either by the issuance of a building permit or by laches.

Yonkers v. Rentways, Inc. 304 NY 499.

In the case of Premium Bond Corporation v. The City of Long Beach (249 A.D.756) the Appellate Division unanimously held:

"In our opinion, the City of Long Beach is not estopped from enforcing the provisions of the zoning ordinance because of any acts or conduct on the part of any of its administrative officers ..."

The individual defendants in the instant action were acting within their jurisdiction and authority in enforcing the provisions of the zoning ordinance.

The plaintiffs seem to rely heavily upon the provisions of the Multiple Residence Law of New York State, which took effect July 1, 1952. The illegal three-family certificate of occupancy on which the plaintiffs predicate their claims herein

was issued April 25, 1952, and could not have been issued pursuant to the Multiple Residence Law. Section 302 of that Law, entitled "Certificate of occupancy", sets forth in subdivision 3 the requirements for obtaining a certificate of occupancy for an "old multiple dwelling not requiring such certificate" as follows:

The department shall, on request of the owner or of his certified agent, issue a certificate of occupancy for any old multiple dwelling not requiring such certificate, provided that, after an inspection by the department, no violations are found against such dwelling.

The premises involved in this case could not qualify because it was never a legal multiple dwelling, having been constructed as a one-family house with a one-family certificate of occupancy, and never having been legally converted to a three-family house pursuant to a building permit. The additional two kitchens were surreptitiously "bootlegged" without benefit of a building permit and without regard for compliance with the building requirements and safeguards required for a legal three-family house. It should be noted that a certificate of occupancy under Section 302 (3) requires that an inspection be made and no violations be found. There was not even a pretext of an inspection before the so-called three-family certificate was issued.

When Subdivision 5 of Section 302 refers to "a certificate", it refers to a certificate issued in compliance with Subdivisions 1 to 4, inclusive, of that section. It could not possibly contemplate the inclusion of a one-family house illegally converted to house three families, in a one-family residence zone, for which a purported three-family certificate had been issued before the effective date of the Multiple Residence Law and without any inspection or other compliance with the safeguards provided by law for a three-family house in effect at the time of its issuance. It follows that the Multiple Residence Law has no application to the facts in this case.

POINT IV

THE ORDER DISMISSING THE
COMPLAINT SHOULD BE AFFIRMED

There is a growing tendency among a certain segment of the bar to consider every alleged wrong, whether real or fancied, to be a violation of their client's civil rights, so that an action may be instituted in the United States court for millions of dollars in punitive damages, instead of an action in the State court for the actual provable damages, if any, that the client sustained. It is easier to prove injured feelings than to prove pecuniary loss, and demands for multiple millions of dollars sometimes bring better settlements than minimal demands. That tendency results in proliferating litigation in the federal courts which should properly be in the State courts or, in cases involving minimal damages to property such as this, might not be deemed of sufficient moment to be litigated at all. The tendency to exaggerate damages and multiply federal lawsuits where no ethnic or minority groups is involved should not be encouraged, but such actions should be relegated to their proper place

in the scheme of our jurisprudence. For all of the reasons set forth in this brief, the order of the Court below should be affirmed.

Respectfully submitted,

MORRIS H. SCHNEIDER,
Corporation Counsel
of the
City of Long Beach,
Attorney for
Defendants-Appellees,
One West Chester Street
Long Beach, N.Y. 11561
516-431-1000

Morton D. Gottlieb
Assistant Corporation Counsel,
Of Counsel



EXHIBIT A.

-18-

On the South side of Broadway, extending southerly to the Boardwalk and from New York Avenue to the westerly side of Riverside Boulevard and from the South side of Front Street and extending southerly to the Boardwalk from the Easterly side of Riverside Boulevard to the westerly side of Roosevelt Boulevard there may be erected on each parcel of land twenty feet in width by the depth of the lot, one or two buildings, one of which may front on Broadway or Front Street and one of which may front on the Boardwalk, to be constructed of brick, tile block, or other fireproof material to be not less than two stories nor more than seven stories in height above the level of the Boardwalk, which buildings may be used for stories with apartments, hotels, bathing pavilions, theatres or other amusement enterprises or business enterprises, excepting however that no manufacturing shall be conducted on said premises and no building that shall constitute a public or private nuisance, excepting however that no stores shall be erected facing on Front Street or Broadway, all of which buildings when so erected shall set back ten feet from the building line of Broadway or Front Street, excepting on streets where buildings are already erected, in which instance the set back shall conform with the set back of the majority of the buildings now erected on the block.

Amended Oct. 5, 1923
See "W"

Amended Sept. 7, 1924
See "W"

Amended Dec. 7, 1926
as to Bl. 35-See "W"

Amended May 10, 1927
as to Bl. 38-See "W"

South of Park Street from the East side of Lindell Boulevard to one hundred feet West of Laurelton Boulevard, on Walnut and Olive Streets, there may be erected a detached bungalow or house for one family only on each lot of land forty feet in width by one hundred feet in depth with a private automobile garage with asbestos shingle roof or similar fireproof roof, building to be constructed of frame with stucco finish, hollow tile, brick or

EXHIBIT A

-19-

concrete, to cost five thousand (\$5,000.) Dollars and to set back twenty feet from the building line of the streets on which the property fronts, excepting where buildings are already erected, in which instance the set back shall conform with the set back of such buildings now erected.

Amended Apr. 25, 1924
See "W" One hundred feet south of Park Street from the West side
Amended July 7, 1925
See "W" of Lindell Boulevard to the Easterly side of May Walk on Walnut
Amended Apr. 13, 1926
as to garage
See "G" and Olive Streets and the Northerly side of Beech Street and on the Westerly side of Lindell Boulevard and both sides of Grand Boulevard, and on May, June, July, August, September, October, November, December, January and February Walks there may be erected a detached private bungalow or dwelling house on each parcel of land forty feet in width by fifty feet in depth to cost at least Two thousand (\$2,000.00) Dollars, to be constructed of frame, hollow tile, brick or stucco, with an asbestos shingle or roof of other semi fireproof material and which building when so erected shall set back five feet from the building line of the respective boulevards, streets and walks on which the property fronts.

Amended Apr. 25, 1925
See "G" No building to be erected on any residential plot within the city limits unless the same shall have a Queen Ann roof, or gable or hip roof, as herein specified, and no building excepting buildings within the business area shall be constructed with a roof known as a flat roof, and no wooden shingles shall be used upon the roof of any building erected within the limits of the City of Long Beach.

Amended Nov. 2, 1923
See "G" On both sides of Beech Street from the Westerly side of Lindell Boulevard to one hundred feet West of the Westerly side of Amended Apr. 25, 1925
See "G" Laurelton Boulevard there may be erected a private residence not less than two stories in height with a private automobile garage

EXHIBIT B

PERMIT No. 2692DEPARTMENT OF BUILDINGS
CITY OF LONG BEACH

NOTICE.—this Application must be filed in DUPLICATE and ONE copy sworn to by Applicant. Plumbing Applications are to be filed separately. One set of Plans must be filed on linen or cloth.

USE Residence - 1 Family NUMBER OF PLANS FILED 1.....
 HEIGHT 2 story.....
 AREA 22' x 58 2/3.....
 APPLICATION No. 180.....1927 RECEIVED 7-29-27
 LOCATION Line 2t. west, Hattie side 220' West of Safford St.
 CITY OF LONG BEACH, 7-28-1927

TO THE COMMISSIONER OF BUILDINGS:

Application is hereby made for approval of the plans and specifications herewith submitted, and made a part hereof, for the erection or alteration of the building therein described,—with the understanding that if no work is performed hereunder within one year from the time of issuance, this approval shall expire; and the applicant agrees to comply with all the rules and regulations of the Zoning Laws of the City of Long Beach, all provisions of the Building Code of the City of Long Beach, and with every other provision of law relating to the erection or alteration of said building in effect at this date.

(Sign Here) I, Loring Construction Co., Inc......APPLICANT
G. Clifford F. Hart.....

When satisfactory evidence has been submitted that Compensation Insurance has been obtained and when properly signed by the Commission of Buildings of the City of Long Beach, this application becomes a PERMIT as required by the Building Code of the City of Long Beach, to perform such work as is described in the foregoing statement and the attached plans and specifications which are a part hereof.

EXAMINED AND APPROVED

APPROVED 7-29-1927

Edw. A. Stimpson.....
 Commissioner of Buildings, City of Long Beach

STATE OF NEW YORK, }
 CITY OF LONG BEACH, } ss:.....
 COUNTY OF NASSAU, }
G. Clifford F. Hart.....(Applicant)

being duly sworn, deposes and says: That he resides at Number 540 West 123rd St.....
 in the City of New York.....in the State of New York.....
 in the County of N.Y......that he is representing Roland V. Smith.....
 owner in fee of all that certain lot, piece or parcel of land, situate, lying and being in the City of Long Beach, aforesaid, and known and designated as Block 63.....Lots 63-64.....
 and hereinafter more particularly described; that the work to be done upon the said premises, in accordance with the accompanying detailed statement in writing of the specifications and plans of such proposed work, including all amendments to the same which may be filed hereafter—and also all Elevator and Plumbing work (if any) proposed to be done upon the same premises and specified in separate applications, and all

EXHIBIT B

subsequent amendments thereto—is duly authorized by *Roland V. Smith*.....
(Name of Owner ~~or Lessee~~)
and that..... *I am*.....duly authorized by the aforesaid..... *Orman*.....
.....to make application for the approval of such detailed statements of specifications
and plans (and amendments thereto) in..... *his*.....behalf.

Deponent further says that the full names and residences, street and number, of the owner or owners
of the said land, and also of every person interested in said building or proposed building, structure or pro-
posed structure, premises, wall platform, staging or flooring, either as owner, lessee, or in any representa-
tive capacity, are as follows:

NAMES AND ADDRESSES

Owner *Roland V. Smith*.....
..... *35 East 37th Street*.....
..... *New York City*.....
.....
.....

Lessee

Architect *Alexander T. Saye*.....
Builder *Steeling Construction Co. Inc.*..... *441 Lexington Ave.*.....
~~Superintendent~~ *n. y. c.*

The said land and premises above referred to are situate, bounded and described as follows, viz.: BE-
GINNING at a point on the *north* side of *Olive Street*.....

distant *220* feet *west* from the corner formed by the intersection of
La Fayette Boulevard and *Olive Street*.....

running thence *40 Westerly* feet; thence *100 Northerly* feet;
thence *40 Easterly* feet thence *100 Southerly*.....

..... feet;
to the point or place of beginning—being designated on the map as Block No. *36*..... Lot No. *63-64*

Sworn to before me, this *29th* day of *April* *1927* { *B. Clifford F. Hart*
for *Roland V. Smith*.
W. Aldrow

PERMIT

SINGS

CITY OF LONG BEACH

EXHIBIT B

PERMIT No. 2692

DEPARTMENT OF BUILDINGS

CITY OF LONG BEACH

NOTICE--This Application must be filed in DUPLICATE.
Use YELLOW Color for Specifications of "Frame" Buildings.

APPLICATION No.

180 1927
Bl 36 & L 33467

RECEIVED 4-29-27

LOCATION Elmer St. North side 240 feet of Elmer St. N. W. E.

E. with Stimpson

Examiner

PERMIT MUST BE RECEIVED BEFORE BEGINNING WORK

Plans must be submitted in duplicates, one set to be filed with the Department and the duplicate set, hereof showing the approval of the Commissioner of Buildings, shall be kept on the work and exhibited on demand to any Building Inspector of the City of Long Beach.

SPECIFICATIONS

(1) NUMBER OF BUILDINGS TO BE ERECTED: *house and garage*
Any other buildings on lot or permit granted for one? *no*

Any buildings to be demolished? *no*

(2) ESTIMATED COST (exclusive of lot): Of each building \$15000. and \$1000.
Of all buildings \$16000.

(3) OCCUPANCY (in detail):
one family home

(4) SIZE OF BUILDING: At street level 22'-6" feet front 56'-8" feet deep
At typical floor level 22'-6" feet front 56'-8" feet deep
Height 2 Storey + cellar stories 2 8' feet

(5) FOUNDATIONS: Character of the ground *sandy*
Depth below ~~Grade~~ *3 1/2" 4'-0"*
Material on which they are to rest *12" concrete footing*

(6) FOUNDATION WALLS: Material *cement blocks - 12" below grade, 8" above* Mortar

(7) Of what material will the frame be constructed *2" square*

What will be the size of the sills *4 x 6* corner posts? *4 x 6* middle posts? *x*
enterties? *x* plates? *4 x 4* braces? *2 x 4* filling in studding? *2 x 4*

(8) How to be framed *balloon* Outside frame diagonally sheathed *3/8"*

(9) Will the outside frame be brick filled? *no*

EXHIBIT B.

(10) If building is not to be used for dwelling, hotel or lodging house, give proposed floor capacity:

1st tier 2d tier 3d tier

(11) Of what material will partitions be built? *2 x 7 - Lath & Plaster*

Will main fore and aft partitions extend to underside of roof beams? *No*

(12) Will the roof be peaked, flat or mansard? *peaked* Material of roofing *Spanish tile*

(13) Will cellar floors be concreted? *yes*

(14) How will building be heated? *steam heat*

Clifford F Hart

Applicant

(Sign here)

1 - 28 - 1927

EXHIBIT C.
CITY OF LONG BEACH
DEPARTMENT OF BUILDINGS

Certificate of Occupancy

ISSUED Sept 21, 1927, TO *Lowland U. Smith*

PREMISES *425 W. Olive St. Block 36 - Lots 63 & 67*

in accordance with Chapter 10 of the Building Code of the City of Long Beach.

THIS CERTIFIES that the ~~ALTERED~~ NEW BUILDING situated on the above mentioned premises has been

completed and conforms substantially to the approved plans and specifications on file in my office and to the requirements of Chapter 10 of the Building Code and permission is hereby granted for its occupancy for the purpose specified below:

Stories	Classification	Construction	
Two (2)	<i>Private Residence & Garage</i>		<i>Frame & Stones</i>
Floors	Occupancy	Live Load Per Sq. Ft. in Pounds	Number of Persons
Cellar	<i>Heating Plant & Storage</i>	—	—
Basement	—	—	—
1st Floor	One (1) family	40#	19 to 16
2nd Floor	—	—	—
3rd Floor	<i>Attic Storage</i>	40#	—
4th Floor	—	—	—
5th Floor	—	—	—
6th Floor	—	—	—

Application

No 507 - 9/1/1927

Edw A. Stimpson
Building Commissioner of Long Beach

EXHIBIT D

15470

PERMIT No.

DEPARTMENT OF BUILDINGS

CITY OF LONG BEACH

NOTICE — This Application must be sworn to by Applicant.
 Plumbing Applications are to be filed separately.

Application for Minor Structures, Alterations and Repairs

Application No.

19

RECEIVED

LOCATION 425 West Alpine St.

HEIGHT

USE

AREA

TO THE COMMISSIONER OF BUILDINGS:

Application is hereby made for approval of the plans and specifications herewith submitted, and made a part hereof for the erection or alteration of the building therein described,—with the understanding that if no work is performed hereunder within one year from the time of issuance, this approval shall expire; and the applicant agrees to comply with all the rules and regulations of the Zoning Laws of the City of Long Beach, all provisions of the Building Code of the City of Long Beach, and with every other provision of law relating to the erection or alteration of said building in effect at this date.

(Sign Here)

Rudolf Steins

APPLICANT

When satisfactory evidence has been submitted that Compensation Insurance has been obtained and when properly signed by the Commissioner of Buildings of the City of Long Beach, this application becomes a PERMIT as required by the Building Code of the City of Long Beach, to perform such work as is described in the following statement and the attached plans which are a part hereof.

EXAMINED AND APPROVED

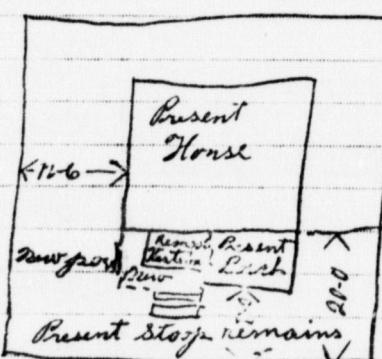
APPROVED *10-9-50*

Commissioner of Buildings, City of Long Beach

Plans must be submitted in duplicate, one set to be filed with the Department, and the duplicate set hereof (bearing the approval of the Commissioner of Buildings) shall be kept on the work and exhibited on demand to any Building Inspector of the City of Long Beach.

(Here state definitely nature of proposed work)

I propose to *remove present vestibule and build a open porch*



How occupied at present 1 Family

How to be occupied 1 Family

Cost \$ 500.00 -

EXHIBIT E.

DAVID ROBINSON
COUNSELOR AT LAW
56 BAY STREET
ST. GEORGE, STATEN ISLAND I
NEW YORK
SAINT GEORGE 7-6043

April 7th, 1952.

Building Department,
City of Long Beach,
Long Island, N. Y.

Gentlemen:-

A client of mine is purchasing premises #425 West
Olive Street, Long Beach, Long Island.

Will you kindly advise if there are any violations
filed against same.

If there is any charge for this kindly mail me your
bill. I would like to have this report by Friday of this
week, and I will appreciate it if you can accommodate me.

Very truly yours,

DR:AR
1921-A

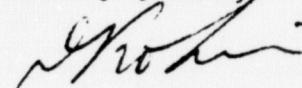


EXHIBIT F.

April 9th, 1952

David Robinson
56 Bay Street
St George, S.I., N.Y.

Re: 425 W. Olive St.
Sec. 2, Bl. 36, Lots 63-64

Dear Sir:

Your letter of April 7th, 1952 re 425 W. Olive Street, Sec. 2, block 36, Lots 63-64 received. An inspection of the above premises made April 9th, 1952 reveals the following:

1st Floor - 1 five room apartment
2nd Floor - 1 five room apartment
3rd Floor - 1 four room apartment

Certificate of Occupancy #507 issued on September 21st, 1927 to Rowland V. Smith was for one family residence. The above property is located in Residence "A" zone which is a one (1) family area.

Yours truly
CITY OF LONG BEACH

PJD/ec

By:
Building Commissioner

EXHIBIT G.



**DEPARTMENT OF BUILDINGS
CITY OF LONG BEACH, NEW YORK**

CERTIFICATE OF OCCUPANCY

ISSUED April 25th 1952 TO Leontine T. Marion Wilson
 PREMISES 425 W. Oline St. 2 3b 43-64
ADDRESS sec. BLOCK ZONE

in accordance with Chapter 10 of the Building Code of the City of Long Beach.

THIS CERTIFIES that the new BUILDING situated on the above mentioned premises has been completed and conforms substantially to the approved plans and specifications on file in my office and to the requirements of Chapter 10 of the Building Code and permission is hereby granted for its occupancy for the purpose specified below:

TYPE BUILDING	ZONE	USE	VARIANCE	— OTHER DETAIL
Dwelling Rca "B"		Three Family		Storage
Floors				
1st Fl - Four rooms & Bath				
2nd Fl - Six rooms & Bath				
Attic - Four rooms & Bath				

811

Certificate No. "A"

Building Permit No. 101-101-101 ... 1952

P.J. Oline

Building Commissioner of Long Beach

EXHIBIT H.
ROBERT I. KLEINER
COUNSELOR AT LAW
ONE WEST PARK AVENUE
LONG BEACH, N. Y.
PHONE LONG BEACH 6-0833

April 26, 1952

Honorable P. J. Devine
Building Commissioner of
the City of Long Beach
City Hall
Long Beach, New York

Re: 425 West Olive Street

Dear Sir:

I represent Beatrice Wilson and Marion Wilson of
425 West Olive Street, Long Beach, New York, who
are the owners of the said property.

Will you kindly arrange to inspect the above
premises, so my client may secure a corrected
Certificate of Occupancy. This building was
erected in September 21, 1927 as a three family
house, and has been used continuously from that
date to the present time as such.

Very truly yours,

Robert I. Kleiner
Robert I. Kleiner

RIK:j1

*Robert I. Kleiner
Long Beach, New York
Enclosure attached*

EXHIBIT I.

Inter - Office Memo

April 25th, 1952

From: Corporation Counsel B.M. Bailey

To: Building Commissioner P.J. DeVine

Re: Certificate of Occupancy
Sec. 2, Bl. 36, Lots 63-64
425 W. Olive St.

Plans filed April 26th, 1926 in the Building Department indicate a one family house. Certificate of Occupancy issued September 21st, 1927 by Building Commissioner at time one Edward A. Stimpson, indicates a one family house, on the same day inspection report signed by same Edward A. Stimpson indicates a three family house consisting of one six, one five and one four room apartments. Water record throughout the years to date indicate same physical condition.

Under the circumstances it is my opinion that at this date 25 years after construction of house and after such use as a three family house, nothing should be done to disturb use as a three family house so long as this house shall remain in existence.

Bearing in mind that we should always concern ourselves with what is expedient for the public, it is my opinion that a correct Certificate of Occupancy namely one for a three family house should be issued to replace Certificate of Occupancy issued September 21st, 1927 which was manifestly incorrect in describing building as a one family residence.

BMB/ec

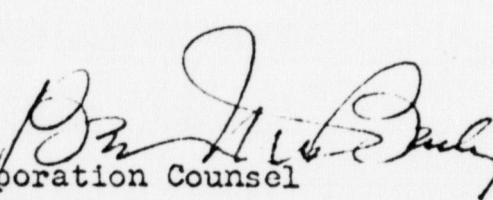
By: 
Corporation Counsel

EXHIBIT J.

**ZONING LAW
BUILDING CODES**

**and various other codes and ordinances
administered by the Building Department**

of the

**CITY OF LONG BEACH
NEW YORK**

1931

Frank Frankel
Mayor

George I. Cullmer, Jr.
Building Commissioner

Price \$1.50

EXHIBIT J

ZONING LAW, CITY OF LONG BEACH, NEW YORK

ing nearest such lot line. Such side yard shall extend for its required width from the front yard or if there is no front yard, then from the street line to the rear yard.

RESIDENCE A DISTRICT

Section 3. a. Uses. Within any Residence "A" District as indicated on the Building Zone Map no building or premises shall be used and no building or structure shall be altered or erected which is intended or designed to be used in whole or in part for other than one or more of the following specified uses:

- 1.** A one family detached house for one housekeeping unit only.
- 2.** A Federal, State, County, Municipal or public utility building or structure, if approved by the Board of Appeals as hereinafter provided.
- 3.** Municipal recreation building, playground or park.
- 4.** College, library, fire station or school.
- 5.** Church or other places of worship, convent, parish house or Sunday School building.
- 6.** Charitable institution, hospital or sanitarium other than one of a correctional nature. Such building shall be located not less than twenty-five (25) feet from every lot and street line.
- 7.** Accessory uses customarily incident to any use permitted by the provisions of this section.
- 8.** Private garage, provided that no business service or industry connected directly or indirectly with motor vehicles is carried on. One commercial vehicle of one and one-half tons capacity or less may be stored by its owner in his private garage, but space therein shall not be rented for a commercial vehicle.
- 9.** A stable, if approved by the Board of Appeals as hereinafter provided. Such stable shall not contain space for more

EXHIBIT J

ZONING LAW, CITY OF LONG BEACH, NEW YORK

g. Accessory Building. An accessory building for accessory uses permitted herein, including a private garage not over fifteen (15) feet high may occupy in the aggregate not over forty per cent. (40%) of the required rear yard area.

h. Density. No residence shall be erected or altered to make provision for more than one family for each five thousand (5,000) square feet of the area of the lot.

RESIDENCE B DISTRICT

Section 4. a. Uses. Within any Residence "B" District as indicated on the Building Zone Map no building or premises shall be used and no building or structure shall be altered or erected which is intended or designed to be used in whole or in part for other than one or more of the following specified uses

1. Any use permitted in this Ordinance in any Residence "A" District.

b. Height. The limit of height of a building shall be two stories and an attic above a basement or cellar, but not over forty (40) feet, except that the limit of height of a church, library, school, or municipal or institutional building shall be four stories but not over sixty (60) feet.

c. Front Yard. There shall be a front yard, the depth of which shall be at least twenty (20) feet back of the street line. In case of a corner lot a front yard shall be required on each street on which the lot abuts.

d. Side Yard. There shall be a side yard along each lot line and it shall be at least five (5) feet in width on one side of the building and eight (8) feet on the other, and extend unobstructed from the front yard to the rear yard.

e. Rear Yard. There shall be a rear yard on every lot and it shall be at least twenty (20) feet deep behind a building, except that first-story rear projections from the building, not exceeding fifteen (15) feet in height, may extend to within fifteen (15) feet of the rear lot line.

EXHIBIT J

ZONING LAW, CITY OF LONG BEACH, NEW YORK

Where a lot is more than one hundred (100) feet deep, one-half of the additional depth of the lot in excess of one hundred (100) feet shall be added to such rear yard depth; but in no case shall a rear yard in excess of forty (40) feet be required.

Where a lot is less than one hundred (100) feet deep, one-half of the diminution in depth of the lot below one hundred (100) feet may be subtracted from such rear yard depth; but no part of such rear yard shall be less than twelve (12) feet in depth.

f. Building Area. The building area shall not exceed forty-five per cent. (45%) of the lot area.

g. Accessory Building. An accessory building for accessory uses permitted herein, including a private garage not over fifteen (15) feet high, may occupy in the aggregate not over forty per cent. (40%) of the required rear yard area.

h. Density. No residence shall be erected or altered to make provision for more than one family for each four thousand (4,000) square feet of the area of the lot.

RESIDENCE C DISTRICT

Section 5. a. Uses. Within any Residence "C" District as indicated on the Building Zone Map no building or premises shall be used and no building or structure shall be altered or erected which is intended or designed to be used in whole or in part for other than one or more of the following specified uses:

1. Any use permitted in this Ordinance in any Residence "A" or "B" District.

2. A detached house for two housekeeping units only.

b. Height. The limit of height of a building shall be two stories above a basement or cellar, but not over forty (40) feet except that the limit of height of a church, library, school, or municipal or institutional building shall be four stories but not over sixty (60) feet.

EXHIBIT K.

June 11, 1968

Mr. & Mrs. Joseph and Hannah Kotkin
425 W. Olive St.
Long Beach, N.Y.

Dear Sir & Madam:

Re: 425 W. Olive St.
Long Beach, N.Y.

Sec. 59-B1.36-Lots 63/64

Kindly call this office at your earliest convenience, for the purpose of making an appointment with me, regarding the above premises.

Very truly yours,

David Linden
Building Commissioner

Ge.1-1000

DL:r

6/13/68

Mr. Kotkin was in this office to-day.
He was advised that his property is zoned for
one family.

No. 348749

EXHIBIT L.

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

NAME TO Mr. & Mrs. L. & L. Walsch	POSTMARK OR DATE
STREET AND NO. 425 W. Olive St.	
P.O. STATE AND ZIP CODE Long Beach, N.Y.	
OPTIONAL SERVICES FOR ADDITIONAL FEES	
RETURN 1. Ships to whom and date delivered 10¢ RECEIPT 2. Shows to whom, date and where delivered 40¢ SERVICES 3. Shows to whom, date and where delivered 20¢ DELIVERY TO ADDRESSEE ONLY 50¢ SPECIAL DELIVERY (2 pounds or less) 50¢	
PCO Form 2000 Sep 1968	NO INSURANCE COVERAGE PROVIDED (See other side)
NOT FOR INTERNATIONAL MAIL	

November 7, 1969

Mr. & Mrs. L. & L. Walsch
425 W. Olive St.
Long Beach, N.Y.

Dear Sir & Madam:

Res 425 W. Olive St.
Long Beach, N.Y.

Sec. 59-B1.36-L.63/64

Inspection of the above premises reveals
the following violation:

There are three family units in a building zoned
for one family occupancy only.

You are hereby directed to take the necessary
steps to correct this violation within ten
(10) days or legal action will be instituted.

Kindly notify this office of action taken.

Very truly yours,

Eli Katz
Building Commissioner
City of Long Beach, N.Y.

F.R.
Cert. R.P.

Received
11/24/69
R.D. 2 Date 14

Exhibit "L"



EXHIBIT M.

THE CITY OF LONG BEACH - NEW YORK
CITY HALL, 11501 (510) 431-1000

December 24, 1970

Mr. & Mrs. Lawrence Walsh
425 West Olive Street
Long Beach, New York

Re: 425 West Olive Street
Sec. 59 Block 36 Lot 63 & 64

Dear Mr. & Mrs. Walsh,

In examination of the official files of the Building Department of Long Beach, covering premises 425 West Olive Street, Long Beach, New York indicating that your building was erected on or about September 1, 1927 as a one family house; Certificate of Occupancy #507 was issued to Mr. Rowland V. Smith on September 21, 1927.

Thereafter a Certificate of Occupancy #A-811 was issued on April 25, 1952 by the then Building Commissioner of Long Beach permitting the building to be used as a three family dwelling.

I am informed by the Corporation Councilor's office that the latter Certificate of Occupancy dated April 25, 1952 was issued improperly and illegally and contrary to the zoning ordinance in existence at that time.

I must advise you that you are presently using the said premises as a three family house in a Residence (B) Zone which permits only the use as a one family house.

This will serve to advise you that as Building Commissioner and Director of Property Conservation, I hereby revoke and recall the said C.O. #A-811 issued on April 25, 1952.

Inspection of the property will be made on or about January 15, 1971 to ascertain the use of said property.

Very truly yours,

David Linden
David Linden
Building & Conservation
Commissioner

DL:ff
Copy: City Manager
Corporation Councilor

(516) 880-0080-81-82

EXHIBIT N.

STATION REALTY CO.

27 WEST PARK AVENUE

LONG BEACH, N. Y. 11561

JUN 15 1972

AT L.I.R.R. STATION

CITY OF LONG BEACH
NEW YORK

June 14, 1972

Mr. Arthur Zimmerman
Commissioner
City of Long Beach
Long Beach, New York 11561

Re: 425 West Olive Street
Long Beach, New York

Dear Mr. Zimmerman:

Enclosed please find a photostated copy of a
certificate of occupancy for the above address.

I am requesting ; for Lawrence Walsh the owner,
for the second time a certificate of compliance.

I am herewith enclosing a check in the amount of
fifteen dollars made payable to the City of Long
Beach for the certificate of compliance.

Very truly yours,

Phyllis Axelrod
Phyllis Axelrod
STATION REALTY CO.

encl

c.c. Judge Kleiner
A. Feuerstein, Esq.

EXHIBIT O.

June 22, 1972

Station Realty Co.
Att. Mrs. Phyllis Axelrod
27 West Park Avenue
Long Beach, N.Y.

Re: 425 West Olive Street
Sec. 59-Bl.36-L.63/64

Dear Mrs. Axelrod:

Your letter of June 14, 1972 requested a Certificate of Compliance for the above premises and enclosed a copy of Certificate of Occupancy, No. A-811, dated April 25, 1952 for the same dwelling.

This Department has determined that the aforementioned Certificate of Occupancy for three (3) families was issued improperly and illegally, and contrary to the Zoning laws existing at that time. In his letter to the owner, dated December 24, 1970 the then Building Commissioner revoked and recalled the illegal Certificate of Occupancy.

We experienced considerable difficulty in gaining entry to the premises and finally had to resort to acquisition of a search warrant on April 27, 1972, in order to make an inspection.

On the basis of our inspection we notified the owners on May 12, 1972 that the premises were in violation of the Zoning laws. To date, no effort has been made to reduce the number of units in the building, and no application for a variance has been made to the Zoning Board of Appeals. In fact, the owners recently vacated their unit, moved out of state, and immediately rented the unit to a third tenant, thus maintaining the status quo.

Under the circumstances and until such time as the matter regarding the illegal Certificate of Occupancy is resolved, by the owners or the Court, and the Zoning violation corrected, no action will be taken by this Department towards issuance of a Certificate of Compliance.

Very truly yours,

AZ:r
Arthur Zimmerman, Commissioner
Encl. check#1217-dated 6/14/72
Dept. of Bldgs. & Property Cons.

sh 1 of 1

EXHIBIT P.

DATE 6/8/72 ZONE B-1 fram

BUILDING DEPARTMENT
CITY OF LONG BEACH, N.Y.
Inspection Report

To Station Realty Agent
27 W. Park Ave
Long Beach, N.Y.
att Mrs. Blyth, in Apartment

The Following was Noted:
Description of Violations

ADDRESS 425 W. Olive

Sec. 59 Block 36 Lots 63/64
+

Owner Lawrence & Loretta Walsh
Address 208 Riverside Ave.

Phone Lyndhurst, N.J.

CITATION #

Owner has moved out of 425 W. Olive - rented
the unit vacated - and has moved to the
above - indicated address.

Certified mail sent to the owner at the 425 W. Olive
address has been returned to us by the Post Office.

Notice of Violations should now be mailed to
the owner's New Jersey address and also to
the above - indicated real estate agent who
represents the owners in their attempts to
sell the property. See attached sheet

Copies to: _____

FIELD REPORT

Signed _____

J. Trapani
Inspector

EXHIBIT Q.



ZONING BOARD OF APPEALS

CITY OF LONG BEACH

LONG BEACH, N. Y.

(516) 431-1000

October 2, 1972

Mr. Lawrence Walsh,
425 West Olive Street,
Long Beach, Long Island

Re: 425 West Olive St.,
Long Beach, N.Y.

Dear Mr. Walsh:

We have tried unsuccessfully to contact you relative to your application to continue to use the above premises as a three family house.

We are in receipt of your check dated June 6, 1972 for \$70.00, the Board of Appeals Application, list of neighbors, sketch of area involved, but you have failed to return certified receipts of Notices forwarded to the abutting property owners and the Affidavit, signed by a Notary Public, that all the neighbors on the list of property owners (within a radius of 150') have been notified.

The next Hearing will be scheduled sometime in November, 1972, but your case cannot be placed on the Calendar until the rest of the papers, as described above are received in this office, no later than and preferably before ten days prior to the November meeting, which will be established after the October 19, 1972 Hearing.

Your cooperation as to your intentions to comply with the instructions herewith attached or your advice as to what procedure you intend to take. In the event that you do not wish to comply, we will return your check and papers.

Very truly yours,

Marian A. Segriff
Marian A. Segriff
Secretary

mas.
R-404-73.

services of three (3) copies of
the within Brief L
hereby admitted this 30th day
of January 1975
Attala
Attorney for